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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 869

MANUEL MUNOZ,

Appellant,

vs.

NEAL POLK, Sheriff of Harris County, Texas

MOTION FOR LEAVE TO FILE STATEMENT OF THE GROUNDS OF JURISDICTION

To the Honorable, the Chief Justice and Associate Justices of said Court:

Now in the above styled and numbered cause comes Appellant, by and through his attorney of record, Bernard A. Golding, and respectfully moves and prays that he be permitted to file the attached Statement of the Grounds of Jurisdiction in this cause which, he says, was inadvertently omitted from the remaining portion of the record was previously forwarded to the Clerk's office of this Court.

Although Movant's attorney left the matter of preparing and forwarding all of the necessary preliminary papers in this appeal to associate counsel, J. S. Bailey, Jr., this counsel resumes full responsibility and urges this Honorable

Court to overlook this inadvertence and permit the filing of said pleading.

WHEREFORE, premises considered, Petitioner prays as above.

MANUEL MUNOZ,
By BERNARD A. GOLDING,
Attorney for said Petitioner,
432 Niels Esperson Bldg.,
Houston, Texas.

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COURT OF CRIMINAL APPEALS OF TEXAS

MANUEL MUNOZ,

Appellant,

vs.

NEAL POLK, Sheriff of Harris County, Texas

STATEMENT OF THE GROUNDS OF JURISDICTION

In support of the Appellate Jurisdiction of the Supreme Court of the United States in this cause, Appellant, Manuel Munoz, respectfully shows:

I

This cause originated by the return of two purported indictments in the Criminal District Court, No. 2, of Harris County, Texas, wherein the Appellant was charged with two other persons, with the offense of robbery by assault—the combined loot amounting to approximately Seven ($7.00) Dollars, a knife, one billfold, one fountain pen, one pencil and a bracelet. These purported indictments were returned on December 19th, 1947. Appellant was tried in the Criminal District Court No. 2 of Harris County, Texas, on January 16th, 1948, and on a plea of guilty, he was given a term of five (5) years in the State Penitentiary, in each case, the sentences not being made cumulative. At the time of the trial, and when Appellant pleaded guilty, he was of the impression, and so stated to the Court, that he was seventeen (17) years of age. No appeal was taken from the conviction

in both cases. After the term of Court had expired, it was discovered *for the first time* that Appellant at the time of the trial and conviction, *and at the present time* was not seventeen (17) years of age, and that under the laws of the State of Texas his case should have been disposed of in the Civil District Courts of Harris County, Texas, in accordance with Art. 2338-1 (Vernon's Annotated Revised Civil Statutes of the State of Texas).

After his arrest and incarceration, Appellant presented to Hon. Langston G. King, Judge of the Criminal District Court No. 2, of Harris County, Texas, a petition praying that a Writ of Habeas Corpus issue to the end that he might be discharged from custody, wherein Appellant contended that the convictions and sentences were void because he was, and is, a "delinquent child" within the meaning and intent of Section 3, Art. 2338-1 (Vernon's Annotated Revised Civil Statutes of the State of Texas) which reads:

> "• • • The term "delinquent child" means any female person over the age of ten (10) years and under the age of eighteen (18) years and any male person over the age of ten (10) years and under the age of seventeen (17) years: • • •"

hence, the judgments of conviction are, null, void and the incarceration illegal; that the convictions and the sentences were violative of the due process, and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, in that the Trial Court as well as the Court of Criminal Appeals of Texas, lack jurisdiction and that the assumption of the jurisdiction, and the conviction attempting jurisdiction were violations of procedural due process contrary to the Fourteenth Amendment to the Constitution of the United States. A hearing was had on said Petition and it was thereat adjudged that the return should be made to the Court of Criminal Appeals of Texas. The

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facts divulged at such hearing were certified by the Trial Judge to the Court of Criminal Appeals for its determination, and on March 17th, 1948, in a written opinion, the Court of Criminal Appeals of Texas decided that the convictions were proper, notwithstanding the fact that it was agreed by all parties at the hearing in the Trial Court that Appellant was mistaken as to his age when he first appeared before the Trial Judge and pleaded to the indictments; that the Baptismal certificate secured from the Catholic Church in Houston, Texas, where Appellant was baptised, and the duly executed birth certificate in accordance with the laws of the State of Texas, attesting as to his true age, correctly reflected Appellant's age. On April 7th, 1948, the Court of Criminal Appeals, in a written opinion, in reply to Appellant's Motion for Rehearing, affirmed its position that although Appellant was a "delinquent child" the convictions should stand. That the Court of Criminal Appeals of Texas is the Court of last resort in all cases of a criminal nature prosecuted under the laws of the State of Texas, and it is the highest court of the State of Texas, which could, or can, decide this cause; that it is constituted the Court of last resort and the highest court of criminal jurisdiction under the constitution and laws of the State of Texas, by the provisions of Art. V, Sections 4 and 5, of the Constitution of Texas, and Arts. 1801-1810, inclusive, of the Revised Civil Statutes of Texas; that the judgment of the Court of Criminal Appeals of Texas upon the overruling of Appellant's Motion for Rehearing herein is final and conclusive except it be reversed by the Supreme Court of the United States (Art. 819, Code of Criminal Procedure of Texas).

That the judgment affirming this cause was a final judgment within the meaning of Sec. 237 of the Judicial Code; that the time for taking the appeal began to run on April 7, 1948, and this Petition for Appeal was presented on May 13th, 1948.

II

This case is one in which the validity of a Statute of the State of Texas, to-wit: Art. 2338-1, Sections 1 to 5 (Vernon's Annotated Revised Civil Statutes of the State of Texas) defining "delinquent children", the establishment of a Juvenile Court in each county in Texas, the jurisdiction of said Juvenile Court and the purpose and basic principle of these Statutes dealing with minor children, such as this Appellant, charged with offenses of the grade of felony, is drawn in question upon the ground that the results achieved in this cause violate principles of justice recognized as fundamental and in defiance of "due process" and "equal protection" clauses of the Fourteenth Amendment to the Constitution of the United States. Since the Statute is not set out at length in the opinion of the Court of Criminal Appeals, it is thought advisable to here set out the same:

> "Art. 2338-1. Delinquent Children; juvenile court established in each county; jurisdiction; transfer of cases; custody-purpose and basic principle.
>
> Section 1. The purpose of this Act is to secure for each child under its jurisdiction such care, guidance and control, preferably in his own home, as will serve the child's welfare and the best interest of the state; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents.
>
> The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them.

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Construction of the Act

Sec. 2. This Act shall be liberally construed to accomplish the purpose herein sought.

Definitions

Sec. 3. The word "court" means the "Juvenile Court." The word "Judge" means the Judge of the Juvenile Court. The term "delinquent child" means any female person over the age of ten (10) years and under the age of eighteen(18) years and any male person over the age of ten (10) years and under the age of seventeen (17) years:

(a) who violates any penal law of this state of the grade of felony;

(b) or who violates any penal law of this state of the grade of misdemeanor where the punishment prescribed for such offense may be by confinement in jail;

(c) or who habitually violates any penal law of this state of the grade of misdemeanor where the punishment prescribed for such offense is by pecuniary fine only;

(d) or who habitually violates any penal ordinance of a political subdivision of this state;

(e) or who habitually violates a compulsory school attendance law of this state;

(f) or who habitually so deports himself as to injure or endanger the morals or health of himself or others;

(g) or who habitually associates with vicious and immoral persons.

Establishment of Juvenile Courts

Sec. 4. Establishment of Juvenile Courts. There is hereby established as follows, in each county of the State, a court of record to be known as the Juvenile Court, having such jurisdiction as may be necessary to carry out the provisions of this Act.

In counties having juvenile boards, such boards may designate the County Court or one or more of the District Courts or Criminal District Courts to be the Juvenile Court or Courts for such county, and such designation may be changed from time to time by such juvenile boards. In all other counties the District Court or the County Court shall be the Juvenile Court as agreed between the judges of such respective courts, but until such time such County Court and District Court shall have concurrent jurisdiction in cases of children coming within the terms of this Act.

Said Criminal District Courts and the judges thereof shall have the same jurisdiction, powers, authority and duties as is now or may be conferred upon District Courts in regard to such children.

It is provided, however, that the jurisdiction, powers and duties thus conferred and imposed upon the established courts hereunder are superadded jurisdictions, powers and duties, it being the intention of the Legislature not to create hereby another office. Appeals from judgments of such Criminal District Courts shall be taken to the proper Court of Civil Appeals. As Amended Acts 1945, 49th Leg., p. 52, c. 35, § 1. Emergency. Effective March 22, 1945.

Jurisdiction

Sec. 5. The Juvenile Court shall have exclusive original jurisdiction in proceedings governing any delinquent child, and such court shall be deemed in session at all times.

Nothing contained herein shall deprive other courts of the right to determine the custody of children upon write of habeas corpus, or when such custody is incidental to the determination of causes pending in such courts.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue under the jurisdiction of the court until he becomes twenty-one (21) years of age, unless discharged prior thereto; such continued jurisdiction shall, however, in

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no manner prejudice or constitute a bar to subsequent or additional proceedings against such child under the provisions of this Act.

It is the contention of Appellant that this statute makes it mandatory that "delinquent children" such as Appellant herein, be tried, and their causes determined in the juvenile court which has exclusive original jurisdiction governing such "delinquent children." That both the Trial Court and the Court of Criminal Appeals of Texas, in hastening the march to the penitentiary of this minor child, in defiance of the statutes of this State which fix exclusive original jurisdiction in the Juvenile Court of Harris County, Texas, is violative of the guarantees of the "due process" and "equal protection" clauses of Sec. 1, of the Fourteenth Amendment to the Constitution of the United States, because this departure from the procedure prescribed by the State of Texas infringes upon segments of the Federal Constitution, and traduces the conscience of our civilization as to be ranked as a fundamental concept, as held in *Palko* vs. *Connecticut*, 302 U. S. 319, 325.

III

The final decision of the Court of Criminal Appeals of Texas, the Court of last resort in all criminal cases in the State of Texas, repudiates the mandate of the Texas Legislature which fixes exclusive original jurisdiction in the Juvenile Court and casts aside Federal constitutional sanctions.

The foregoing issues and questions under the Fourteenth Amendment to the Constitution of the United States were raised in the Trial Court on the petition for a Writ of Habeas Corpus and were overruled as appears from the judgment of the Court of Criminal Appeals of Texas, and they were likewise raised in the latter court as appearing in

the briefs of the parties and were overruled by the Court of Criminal Appeals as is reflected from the opinions of that Court in this cause. The parts of the record herein referred to are by the settled practice of this State matters of record before this Court and will be included in the transcript on appeal to the Supreme Court of the United States as a part thereof.

IV

In accordance with the rule of the Supreme Court of the United States (Rule 46, Par. 2, 28 U. S. C. A. Sec. 354), Petitioner respectfully shows that this case is one in which under the legislation in force at the time the Act of Jan. 31, 1928 (45 Stat. L. 54) was passed, to-wit: under Sec. 237 (a) of the Judicial Code (28 U. S. C. A. Sec. 344), an appeal may be taken in any case which under prior statutes could be received as a matter of right on Writ of Error.

V

The following cases are believed to sustain the Appellate jurisdiction of the Supreme Court of the United States:

People ex rel. Bryant v. *Zimmerman*, 278 U. S. 63, 66-69, 70-71;

Rogers v. *Alabama*, 192 U. S. 226, 230, 231;

Davis v. *Wechsler*, 263 U. S. 22, 24;

Love v. *Griffith*, 266 U. S. 32;

New York Central R. Co. v. *New York & Pennsylvania*, 270 U. S. 124, 126, 127;

German Savings & Loan Soc. v. *Dormitzer*, 192 U. S. 125, 128;

Postal Tel. Cable Co. v. *Newport*, 247 U. S. 464, 473, 475-476;

Brown v. *Mississippi*, 297 U. S. 278;

Patterson v. *Alabama*, 294 U. S. 600, 603-607.

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VI

The following letter, as well as the intended informal opinion, circulated in this cause is believed to be worthy of inclusion at this point, for the purpose of not only showing that this Court should take jurisdiction, but also to demonstrate the complete denial of due process and of the equal protection of the laws applied to this Petitioner in this cause:

"Board of Pardons and Paroles
State of Texas
Austin

February 12, 1948.

Hon. Langston G. King, Judge,
Criminal District Court No. 2,
Criminal District Courts Building,
Houston, Texas.

In Re: Manuel Munoz

Dear Judge:

I have received your letter with reference to the above styled subject. I have had a conference with Mr. W. E. Robertson, Chief Probation Officer of Harris County. I have discussed the matter informally and under no circumstances officially with members of the Attorney General's Department. Our conclusions in the matter are as follows. Mr. Robertson has presented us with sufficient evidence to show that the subject is being illegally restrained of his liberty because of non-age. The facts as we get them are that the trial court was presented with facts which to us appears to be wholly untruthful; that by reason of said situation the court was definitely mislead upon such facts and allowed this defendant to go to trial and to enter his plea of guilty. The court had nothing to do except to accept his plea and sentence him in accordance with adult criminal statutes.

However, the Board of Pardons and Paroles nor the Governor of this State would have no semblance of jurisdiction because of the subsequent evidence fur-

nished us that the subject is beyond any question of a doubt a "juvenile", and juveniles having been transferred to the Civil Court for processing deprives us of any jurisdiction whatever and likewise the Criminal District Court in trying the subject.

The only procedure that can be had now, your term of court having been adjourned and having ended, would present this phase of the case that there is nothing your court can do in setting aside the judgment unless it is brought before you on a habeas corpus hearing alleging the fact that the court was mislead on the question of age and that such writ is applied for the purpose of releasing the defendant to the juvenile authorities.

I am enclosing you herein also a copy of the opinion of the Attorney General of Texas in another case which was in response to copy of our letter to the Attorney General, setting forth practically the same facts as in this case. If you would have any objections to having this habeas corpus filed in your court which in my judgment is the proper place to have it filed, I would be glad to file it in the court of Criminal Appeals without expense to the defendant and appear as amicus-curiae. Whichever way you would like for the matter to be handled, but under no circumstances could this Board take jurisdiction in the case because of the facts stated above.

With every good wish, I am

Very truly,

ABNER L. LEWIS,
Chairman,
Board of Pardons & Paroles."

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"Office of the Attorney General
Austin, Texas

March 21, 1947.

Hon. A. C. Winborn,
District Attorney,
Harris County,
Houston, Texas.

Re: Joseph Joyce alias Joseph P. Altomare

Dear Sir:

This office has a request for an opinion from the Board of Pardons and Paroles as to whether there is any method by which it can release the subject named juvenile, who is now an inmate of the State Prison at Huntsville, purely on the question of non-age.

Subject was given a two year sentence on his plea of guilty before one of your Criminal District Courts, January 16, 1947, on a charge of felony theft, and it now appears he is less than 15 years of age.

We are of the opinion that the Judge who sentenced him could set the judgment aside and transfer the case to the Juvenile Court in accordance with Sec. 12 of Art. 2338-1, V.C.S., if the judgment was entered during the present term of Court or an extension thereof. In which event it would obviate the necessity of writing a formal opinion by this office, and accomplish the end contemplated by Art. 2338-1.

We will appreciate an expression from you as to the possibility of the above action at your earliest convenience

Your very truly,

Attorney General of Texas,
By (S.) Robert A. Hall,
Assistant.

RAH: 1h
cc: Board of Pardons and Paroles."

VII

The following case is believed to sustain Petitioner's contention that the departure from procedure by the State

of Texas infringes the Federal Constitution, although the point in said case involved the issue as to whether a provision of a State constitution prohibited cruel and unusual punishment:

State of Louisiana ex rel. Francis v. *Resweber*, 329 U. S. 459 (1947), also see concurring opinion of Mr. Justice Frankfurter at pp. 466-481.

It Is Therefore, respectfully submitted that this case involves a substantial Federal question under the Constitution of the United States, and that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 237 of the Judicial Code.

Respectfully submitted,

Bernard A. Golding,
432 Niels Esperson Bldg.,
Houston, Texas;
J. S. Bailey, Jr.,
First National Bank Building,
Houston, Texas,
Attorneys for Appellant, Manuel Munoz.

Bernard A. Golding,
432 Niels Esperson Bldg.,
Houston, Texas,
Of Counsel.

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APPENDIX "A"

No. 24,042

Ex Parte: MANUEL MUNOZ

Appeal from Harris County

Opinion

Relator contends herein that he is but sixteen years of age; that heretofore on January 16, 1948, he pleaded guilty in the District Court of Harris County to an indictment charging robbery by assault as well as pleading guilty to a further case of robbery by assault, and received a penalty and sentence of five years in each case, the terms running concurrently; that no appeal was taken from either judgment finding his guilt of robbery; and that after such pleas of guilt and the adjournment of the term of court in which these judgments were entered, he ascertained that he was only sixteen years old and not seventeen years of age as he had theretofore believed himself to be, and as he had told the trial court at the time of his trial. Therefore, he contends that he being a juvenile, any judgment of the court sentencing him to the penitentiary was void and of no effect and can be attacked by a writ of habeas corpus; that upon such a showing of his age, the trial court should have turned him over to the juvenile court.

We have recently written upon a matter practically identical to the proposition here urged in Ex parte Huddleston, 194 S. W. (2) 401.

In the present case, it is shown that relator, when brought before the District Judge, gave his age as seventeen years, and he claimed to have been under the impression that such was his age until his baptismal certificate was found; that upon same being filed with the proper authorities, he was issued a birth certificate showing him to be but sixteen years of age at the time of the trial and at the present time. The birth certificate was issued on January 24, 1948, and the trial on the indictment was had on January 16, 1948. However, the birth certificate was not presented to the trial

judge during the term of court at which the relator was tried and sentenced, such term expiring on January 31, 1948.

Relator's attorney testified herein, and his testimony shows that the relator, as well as relator's father, told him at the time of the trial that relator was seventeen years old and he believed them until they told him about the baptismal certificate, and birth certificate, which was prior to the time the court had adjourned, but he did not have possession thereof until after the term of court had expired.

In the case of Ex parte Huddleston, supra, we held as follows:

> "It is quite obvious from the facts certified by the trial judge that nothing was brought to his attention from which he could have 'ascertained' that relator was under seventeen years of age, requiring a transfer of the case to the Juvenile Court. Therefore, the trial judge properly proceeded to dispose of the case under the plea of guilty. The question then before us is: Can relator in a habeas corpus proceeding set aside this judgment which is regular upon its face and entitled to full faith and credit?
>
> That an accused is not permitted to resort to habeas corpus, thereby substituting it for an appeal, is too well established to excuse more than a reference to the authorities. See 21 Tex. Jur., Sec. 8, p. 426, and authorities cited; Branch's Ann. Tex. P. C., Sec. 239, p. 151, and authorities cited; Ex parte Banspach, 130 Tex. Cr. R. 3, 91 S. W. (2) 365. If it had been a contested issue upon the trial of relator whether he was over or under seventeen years of age and that issue had been determined against him, and no appeal taken, surely he would not be permitted in a habeas corpus proceeding to seek a new trial, or release from the effect of the judgment of conviction, upon the ground that new evidence was available on the question of his age. Upon relator's trial on his plea of guilty the question of his age was not contested, but it is evident from the certificate of the trial judge that the question had attention. In his confession relator stated that he was seven-

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teen years old, and upon the trial testified before the court to the same effect."

Upon the authority of that case, the judgment herein is affirmed.

GRAVES, *Judge.*

(Delivered Mar. 17, 1948.)

Filed in the Court of Criminal Appeals, Austin, Texas, 3/17/48. Olin W. Finger, Clerk.

APPENDIX "B"

No. 24,042

Ex Parte MANUEL MUNOZ

Appeal from Harris County

Opinion on Motion for Rehearing

In his motion for rehearing it is vigorously argued that the facts of this case show the judgment below to be void, for which reason it is further insisted that this Court has jurisdiction of the case.

In the first place, the evidence in this proceeding was heard by the District Judge who, in his order, says: "I proceeded to hear the said application. And after having examined the Writ and the return of the respondent Neal Polk, and all papers and documents attached thereto, and having heard the testimony offered on both sides, I am of the opinion that legal cause has been shown for the imprisonment or restraint of the said Manuel Munoz." He then grants the writ made returnable to this Court, but remands the appellant to the custody of the sheriff to await the determination of the question presented.

The original opinion herein disposes of every question of which this Court should take notice and it is not necessary to write further. We do observe, however, that the effort is made to have this Court set aside all previous deci-

sions of the Court on the subject. This is based on the contention that the so called Juvenile Act supercedes the law of procedure laid down by the legislature, which this Court has so many years followed. We find no support for this contention. The act referred to is found on page 316, General Laws of 1943, and specifically provides for the transfer of a case if it should be ascertained during the pendency of an indictment that the accused is a male person under the age of 17 at the time of trial for the alleged offense. There is no provision for reopening a case and granting a new trial and constituting this Court a trial court to hear the evidence, as contended by appellant. The Court of Criminal Appeals has appellate jurisdiction. It is a court of review. Procedure is directed by acts of the legislature. The fact that it is a court of last resort, and its holdings are not reviewable by any other court except when a federal question is raised, would not justify the Court in exceeding its constitutional and statutory authority. Such contention cannot be sustained.

The original opinion properly disposed of the appeal and the motion for rehearing is overruled.

BEAUCHAMP, *Judge.*

(Delivered April 7, 1948.)

Filed in the Court of Criminal Appeals, Austin, Texas, 4/7/48. Olin W. Finger, Clerk.

(6945)

No. 97. MUNOZ *v.* POLK, SHERIFF. Appeal from the Court of Criminal Appeals of Texas. *Per Curiam:* The appeal is dismissed for want of a properly presented fed-

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eral question. *Bernard A. Golding* for appellant. Reported below: 151 Tex. Cr. —, 209 S. W. 2d 767.